

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Western Wireless Corp.)	
Petition for Agreement With Redefinition of)	
Service Areas of Certain Rural Incumbent)	
Local Exchange Carriers in the State of)	
Minnesota Pursuant to 47 C.F.R. § 54.207(c))	

The Minnesota Independent Coalition and certain rural telephone companies that are members of the MIC (collectively the “MIC”) submit these Comments in response to the Commission’s September 29, 2004 Public Notice regarding the Petition of Western Wireless Corp. (“Western Wireless”) to redefine the service areas of eight rural telephone companies in Minnesota (the “Western Wireless Petition”). For the reasons set forth below, the MIC requests that the Commission initiate a proceeding to consider the Western Wireless Petition under 47 C.F.R. § 54.207(c)(3) or stay the Western Wireless Petition pending completion of the Federal-State Joint Board (the “Joint Board”) proceeding on USF portability.

I. THE WESTERN WIRELESS PETITION RESTS ON OTHER PETITIONS TO REDEFINE SERVICE AREAS IN MINNESOTA THAT REMAIN PENDING BEFORE THE COMMISSION.

The Commission should initiate a proceeding to consider the Western Wireless Petition because the Western Wireless Petition rests on other petitions for redefinition that remain pending before the Commission. Western Wireless notes that “[f]our of the eight rural ILEC

service areas in which Western Wireless sought and received ETC designation had already been the subject of redefinition by the Minnesota PUC”¹ Western Wireless further asserts that:

“[A] second, duplicative redefinition analysis should be unnecessary if another competitive ETC seeks designation in the redefined area of the rural telephone company. Accordingly, if the Commission approves the redefinition of the CenturyTel, Federated Tel. Coop., Mid-State Tel. Co., and Sprint-Minnesota, Inc. (“Sprint”) study areas in the previous proceedings arising from the [previous Minnesota PUC decisions regarding redefinition], redefinition of those rural company study areas should not be needed in this proceeding.”²

The significant point is that the Commission *has not* agreed to redefinition of these four rural telephone company study areas at this time. Rather, petitions for redefinition of those study areas remain pending before the Commission. Until a decision is made on the merits by the Commission in the pending investigations regarding redefinition of those areas, the Western Wireless Petition lacks any foundation to support redefinition of those areas in this proceeding. Accordingly, the Commission should open an investigation of the Western Wireless Petition in order to avoid potential inconsistency.

II. THE MINNESOTA PUC DID NOT APPROPRIATELY CONSIDER THE ADVERSE FINANCIAL IMPACT OF THE WESTERN WIRELESS REQUEST.

The Minnesota PUC noted Western Wireless’ argument that its added impact on the federal universal service fund was “not an amount that would burden the federal universal service fund,”³ and the MIC argument that the designation would not “yield adequate public interest benefits sufficient to outweigh the added impact on the fund.” However, the Minnesota

¹ *Western Wireless Corporation Petition for Agreement with Redefinition of Services Areas of Certain Rural ILECs in the State of Minnesota*, CC Docket No. 96-45, at p. 6.

² *Id.* footnote 9

³ *Petition by WWC Holding Co., Inc., Order Approving Petition for ETC Designation* (MPUC Docket No. P-5699/M-04-226, August 19, 2004) at p. 7.

PUC found that the designation was in the public interest, but did not articulate any rationale in relation to the impact of Western Wireless' ETC designation on the federal universal service fund.

In prior opportunities to consider this issue, the Commission has dismissed as inconclusive those arguments that focus solely on one carrier's impact on the overall size of the fund, similar to the argument advanced by Western Wireless to the Minnesota PUC in this docket.⁴ As the Commission observed in *Virginia Cellular*, "we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs."⁵ Therefore, the touchstone for evaluating the fund impact of an additional ETC designation is the incremental increase in a carrier's draw from the fund and the magnitude of such an increase.

Also, this critical public interest issue remains under consideration by the Joint Board. Until the Joint Board issues its recommendation and the Commission makes a determination, the Commission should not allow redefinition to take effect on the basis of a state determination, such as the Minnesota PUC decision, that fails to make clear the reasoning relating to an ETC applicant's impact on the federal universal service fund. Accordingly, the Commission should conduct its own investigation of the Western Wireless Petition under 47 C.F.R. § 54.207(c)(3).

⁴ *In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. Apr. 12, 2004) ("*Highland Cellular*") at ¶ 25, n. 73 ("We note, however, in light of the rapid growth in competitive ETCs, discussed above, comparing the impact of one competitive ETC on the overall fund may be inconclusive.")

⁵ *Virginia Cellular* at ¶ 31.

III. THE COMMISSION SHOULD STAY CONSIDERATION OF THE WESTERN WIRELESS PETITION UNTIL IT RESOLVES THE PENDING ISSUES RELATING TO CERTIFICATION OF COMPETITIVE ETCs.

On February 7, 2003, the Joint Board issued a Public Notice which sought comment on many universal service issues, including the process for designating ETCs and the methodology for calculating support in competitive study areas.⁶ For example, the Joint Board has asked for comment on “what weight should states place on the presence of [disaggregation] zones when determining whether the designation of a competitive ETC below the study area level is in the public interest.”⁷ Perhaps even more fundamentally, the Joint Board sought comment on whether “providing universal service support for multiple ETCs in high-cost areas result[s] in inefficient competition and imposes greater costs on the universal service fund.”⁸ Comments and reply comments have been filed in this proceeding, and the Joint Board conducted a hearing on these issues on July 31, 2003. It is quite possible that, as a result of this proceeding, there will be significant changes in the way in which competitive ETCs are designated, and in the level of support that they ultimately receive.

Further, a number of petitions for redefinition of service areas are currently pending before the Commission, and it is highly probable that the number of ETC applications will continue to increase. As a result, a number of parties have recommended that the Commission

⁶ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, CC Docket No. 96-45, Public Notice, 18 FCC Rcd 1941 (2003) (Joint Board Public Notice).

⁷ Joint Board Public Notice at ¶ 35.

⁸ *Id.* at ¶ 16.

stay the approval of additional ETC applications until the issues being considered in the Joint Board Public Notice are resolved.⁹

The same considerations apply here to the request for disaggregation set forth in the Western Wireless Petition. The public interest would best be served by staying the Western Wireless Petition during the period when key policies related to universal service support levels and ETC designations are currently under review.

IV. Conclusion.

For the reasons set forth above, the Commission should open an investigation of the Western Wireless Petition or otherwise stay the Western Wireless Petition pending completion of the Joint Board proceeding.

October 13, 2004

Respectfully submitted,



⁹ See, Verizon Comments in CC Docket No. 96-45 (filed July 7 and July 14, 2003), pp. 1 and 8. This proposal is similar to one made by the National Telecommunications Cooperative Association (NTCA) in their reply comments to the Joint Board Portability Public Notice. See, NTCA Reply Comments in CC Docket No. 96-45 (filed June 3, 2003), pp. 22-23; ; OPASTCO Comments in CC Docket No. 96-45 (filed August 18, 2003); Comments of Delta County Telecom, Inc. in CC Docket No. 96-45 (filed February 6, 2003); Reply Comments CenturyTel of Eagle, Inc in CC Docket No. 96-45 (filed February 21, 2003).